

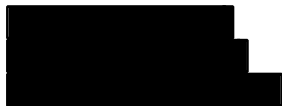


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**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of



DECISION

KIN/145248

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**PRELIMINARY RECITALS**

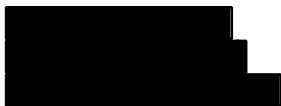
Pursuant to a petition filed November 13, 2012, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Perez-Pena Limited in regard to Kinship Care, a hearing was held on January 10, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether Perez-Pena Limited (Perez- Pena) correctly denied Petitioner's application for kinship care benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Richard Williams, Kinship Care Worker  
Perez-Pena Ltd.  
Bureau of Milwaukee Child Welfare  
1555 Rivercenter Drive  
Milwaukee, WI 53212

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.
2. Petitioner applied for Kinship Care benefits on October 10, 2012. She is not the child's guardian, nor is there a pending guardianship action. (Petitioner's testimony; Exhibit 5)

3. Perez-Pena sent Petitioner a notice on November 9, 2012, denying her request for Kinship Care benefits. (Exhibit 1 and 4)
4. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 13, 2012. (Exhibit 1)
5. Petitioner is the subject child's maternal aunt. The child, DG is three years old and has been living with Petitioner since late August/early September 2012, around the time of the child's birthday. (Testimony of Petitioner; Exhibit 5)
6. Petitioner was to care for the child temporarily, but the child's mother (the mother) never returned for the child. (Petitioner's testimony; Exhibit 5)
7. The full name and whereabouts of the child's father are unknown. (Exhibit 5)
8. The mother last reported to the Department of Health Services that her address was in Kenosha, Wisconsin. The mother made no contact with Perez-Pena despite the fact that Perez-Pena sent a letter to her last known address in Kenosha, requesting such contact. (Exhibit 5; testimony of Richard Williams)
9. Since placing the child with Petitioner in late August/Early September 2012, the mother has had contact with the child only once on November 14, 2012, after Perez-Pena's home assessment. She has not contacted Petitioner or the child at any other time; she has not provided to Petitioner any means of contacting her and her current whereabouts are unknown to petitioner. (Petitioner's testimony; Exhibit 5; Exhibit 7)

### **DISCUSSION**

The Kinship Care benefit is a public assistance payment of \$220 per month per child paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaces the former Non-Legally Responsible Relative (NLRR) Aid to Families with Dependent Children (AFDC) payment. To be eligible for the payments, the relative must meet all of the conditions set forth in Wis. Stat. §§48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6). Subsection (3m) concerns Children in Need of Protection or Services (CHIPS) and subsection (3n) concerns guardianship cases.

In this case, Petitioner does not yet have guardianship, so Petitioner is not eligible to receive Kinship under Wis. Stats. §48.57(3n).

This case turns on whether Petitioner meets eligibility criteria under Wis. Stats. §48.57(3m)(am)(1-5) which states in pertinent part:

...A county department and, in a county having a population of 500,000 or more, the department shall make payments in the amount of \$220 per month to a kinship care relative who is providing care and maintenance for a child if **all** of the following conditions are met:

1. The kinship care relative applies to the county department or department for payments under this subsection and the county department or department determines that there is a need for the child to be placed with the kinship care relative and that the placement with the kinship care relative is in the best interests of the child.
2. The county department or department determines that the child meets one or more of the criteria specified in s. 48.13 or 938.13, that the child would be at risk of meeting one or more of those criteria if the child were to remain in his or her home or, if the child is 18 years of age or over, that the child would meet or be at risk of meeting one or more of those criteria as specified in this subdivision if the child were under 18 years of age.

*The Need for Placement and the Best Interests of the Child*

The Wisconsin Administrative Code, at §DCF 58.10(1), describes the “need” for placement as follows:

...The agency shall determine that the child needs the kinship living arrangement by determining at least one of the following:

- a) The child's need for adequate food, shelter and clothing can be better met with the relative than with the child's parent or parents.
- b) The child's need to be free from physical, sexual or emotional injury, neglect or exploitation can be better met with the relative than with the child's parent or parents.
- c) The child's need to develop physically, mentally and emotionally to his or her potential can be better met with the relative than with the child's parent or parents.
- d) The child's need for a safe or permanent family can be better met with the relative than with the child's parent or parents.

Perez-Pena’s assertion that it correctly denied Petitioner’s application for benefits is three pronged. First, it argues that there is no need to place the child with Petitioner, because the child’s mother receives FoodShare Benefits. However, the receipt of financial assistance from the government does not preclude an individual from abusing or neglecting a child, nor does it automatically render a person capable of providing a safe and stable environment for a child.

Second, Perez-Pena argues that there is no need for the child to live with the aunt, because the placement is voluntary. However, voluntariness of a placement is not one of the listed criteria that determines need under Wis. Admin. Code §DCF 58.10(1).

Finally, Perez-Pena argues that the child was placed with Petitioner strictly for reasons of poverty, which under Wis. Stats. §48.13, discussed below, does not necessarily allow for a finding that the child is at risk of being the subject of a CHIPS action.

While the initial reason for the placement might have been for reasons of poverty, it is clear that the child needs to reside with his aunt, because he is three years old and has nowhere else to go. No one has heard from the mother in months and no one knows for sure where she is or if she will return. Further, the full identity of the child’s father is unknown; as such, the child cannot be expected to rely upon his father to meet his needs.

Based upon all of the forgoing, it is found that the child’s need for a safe and permanent family and that his need to develop to his potential can be better met with Petitioner than with the child’s mother. Thus, per the criteria set forth above, Petitioner has established that there is a need for the child to be in Petitioner’s care and that it would be in the child’s best interests.

*The risk that the child would meet the criteria under Wis. Stats. §48.13*

Wis. Stat. §48.13, which provides for jurisdiction over children alleged to be in need of protection or services and states in relevant part:

The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

- (1) Who is without a parent or guardian;
- (2) Who has been abandoned;
- (2m) Whose parent has relinquished custody of the child under s. 48.195 (1);
- (3) Who has been the victim of abuse, as defined in s. 48.02 (1)(a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another;
- (3m) Who is at substantial risk of becoming the victim of abuse, as defined in s. 48.02 (1)(a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;
- (4) Whose parent or guardian signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child;
- (5) Who has been placed for care or adoption in violation of law;
- (8) Who is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;
- (9) Who is at least age 12, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;
- (10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;
- (10M) Whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;
- (11) Who is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to ameliorate the symptoms;
- (11m) Who is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or
- (13) Who has not been immunized as required by s. 252.04 and not exempted under s. 252.04 (3).

It is the contention of Perez-Pena that the child does not meet any of the criteria enumerated above. However, there is significant risk that the child will become the subject of a CHIPS action under Wis. Stats. Sec. 43.13, specifically under subsection 8, which is concerned with whether a child will receive inadequate care because his or her parent is missing, incarcerated or hospitalized. The child is three years old and his parents are missing.

The full identity and whereabouts of the child's father are unknown. His mother's current whereabouts are unknown and were unknown at the time the Kinship Care benefits were denied. It was and is unknown when, if ever, the mother will return to take custody of the child. Indeed, the mother has made only one contact with the child since leaving the child with Petitioner in late August/early September 2011 and she has left no contact information.

## **CONCLUSIONS OF LAW**

Perez-Pena incorrectly denied Petitioner's application for Kinship Care benefits.

**THEREFORE, it is**

### **ORDERED**

That the matter be remanded to Perez-Pena/Bureau of Milwaukee Child Welfare/Department of Children and Families to take the necessary steps to issue Petitioner Kinship Care Benefits back dated to October 10, 2012, the date of application. The agency shall do this within ten days of this order.

## **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

## **APPEAL TO COURT**

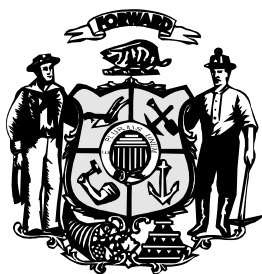
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 15th day of January, 2013.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



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The preceding decision was sent to the following parties on January 15, 2013.

Perez-Pena Limited  
DCF - Kinship Care  
DCF - Kinship Care